

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**KIMBERLY A. JACKSON**  
Indianapolis, Indiana

ATTORNEY FOR APPELLEES:

**TOBY GILL**  
Marion County Department of Child Services  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF PARENT CHILD )  
RELATIONSHIP OF [J.P.], MINOR CHILD )  
AND HER MOTHER TIFFANY PRICE )

TIFFANY PRICE, )  
 )  
Appellant-Respondent, )

vs. )

No. 49A02-0609-JV-810

MARION COUNTY DEPARTMENT OF CHILD )  
SERVICES, )

Appellee-Petitioner, )

and )

CHILD ADVOCATES, INC., )

Co-Appellee. )

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Victoria Ransberger, Judge Pro Tempore  
Cause No. 49D09-0602-JT-7095

---

**May 23, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Tiffany Price (“Price”) appeals the termination of the parent-child relationship with her daughter, J.P., upon petition of the Marion County Department of Child Services (“DCS”). She raises the following three restated issues for our review:

- I. Whether the trial court erred in failing to appoint counsel for Price in the underlying Children in Need of Services (“CHINS”) action.
- II. Whether the trial court erred in admitting evidence at the termination hearing.
- III. Whether there is sufficient evidence to support the termination.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

J.P. was born one month early on December 3, 2004. She was released from the hospital to Price in January 2005. Three months later, Price’s mother took J.P. to live with her because she was concerned about Price’s mental health issues and J.P.’s safety. Price visited J.P. every day at her mother’s house.

In June 2005, police were dispatched to Price’s mother’s house because of a domestic disturbance involving Price. Price was transported to the inpatient unit at Wishard Hospital, and J.P. was taken into custody. In July 2005, DCS filed a petition alleging that J.P. was a CHINS. Price admitted the allegations in the petition, and the trial court adjudicated J.P. to be a CHINS. Price was not represented by counsel.

Pursuant to the CHINS dispositional decree, Price was ordered to participate in parenting classes, homebound counseling, and supervised visitation with J.P. She was also ordered to undergo a psychiatric evaluation and to maintain stable housing. When Price failed to comply with the order, DCS filed a petition to terminate her parental rights.

Testimony at the termination hearing revealed that Price, who attempted suicide in 2000, and suffered “nervous break downs” in 2002 and 2004, has been diagnosed as a paranoid schizophrenic and manic-depressive. *Tr.* at 19. Price described her breakdowns as follows:

I mean basically my momma said like I smack on everybody and just start acting crazy and she can tell something ain't right so she call like the ambulance for me and have them come and get me and then I'll get like put in the hospital.

*Tr.* at 19-20. Price has taken medication for these conditions in the past but was not taking anything at the time of the hearing.

Price has not worked since 2002, when she was employed at McDonald's for four months. In addition, she has a criminal history, which includes ten arrests for offenses such as disorderly conduct, assault and battery, and trespass. At the time of the hearing, Price was living with her boyfriend in a one-bedroom apartment.

Price admitted that she had not completed any of the evaluations or services that were set forth in the CHINS dispositional order. She also admitted at the July 25, 2006, termination hearing that she had not seen or visited nineteen-month-old J.P. since June 2005 when J.P. was six months old.

Following the hearing, the trial court granted DCS's petition to terminate Price's parental relationship with J.P. Price appeals.

## **DISCUSSION AND DECISION**

### **I. Appointment of Counsel**

The first issue is whether the trial court erred in failing to appoint counsel for Price in

the underlying CHINS action. This issue is waived because Price should have raised it in an appeal of the CHINS adjudication. *See Smith v. Marion County Dep't of Pub. Welfare*, 635 N.E.2d 1144, 1148 (Ind. Ct. App. 1994), *trans. denied*, (stating that the time for appealing an issue in a CHINS proceeding commences when the CHINS dispositional decree is entered).

Waiver notwithstanding, we find no error. Price both failed to request counsel at the CHINS proceeding and demonstrate in her appellate brief that the termination hearing would have produced a different result had Price requested counsel at the CHINS hearing. Further, the absence of counsel at the CHINS proceeding had no bearing on the evidence that was presented at the termination hearing. DCS established that Price failed to comply with the CHINS dispositional order. She also had not seen her daughter in over a year. In addition, Price failed to participate in counseling and parenting classes, refused to undergo a psychiatric evaluation, and did not demonstrate employment or residential stability.

Based on the evidence presented, the trial court found there was a reasonable probability that the continuation of the parent-child relationship posed a threat to J.P.'s well being. Price has failed to show how having counsel at the CHINS proceeding would have enabled her to show a reasonable probability that she would have made the necessary improvements that would have resulted in reunification with J.P. *See id.* at 1149. We find no error.

## **II. Admission of Evidence**

Price also argues that the trial court erred in admitting Exhibits D, E, F, G, and H into evidence. These exhibits include the CHINS dispositional order, a participation decree, and placement and jurisdiction reviews. Price claims the exhibits should not have been admitted

because although the magistrate signed them, the judge did not.

Price has waived appellate review of this issue because she failed to object to the admission of the exhibits at the CHINS proceeding. *See Smith*, 635 N.E.2d at 1148. Waiver notwithstanding, we find no reversible error.

First, DCS points out that all of the exhibits have the following symbol just above the judge's signature line: %%. According to DCS, this symbol represents the judge's electronic signature. There is nothing in the record of the proceedings indicating that it does not.

Further, even if the exhibits were erroneously admitted, the error was harmless. The erroneous admission of evidence that is merely cumulative of other evidence in the record is not reversible error. *Beach v. State*, 816 N.E.2d 57, 59 (Ind. Ct. App. 2004). Here, the evidence in the exhibits is merely cumulative of the testimony at the termination hearing. We find no reversible error.

### **III. Sufficiency of the Evidence**

The purpose of terminating parental rights is not to punish parents but to protect their children. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. *Id.*

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *In re R.S.*, 774 N.E.2d 927, 929-30 (Ind. Ct. App. 2002), *trans. denied*. When reviewing the sufficiency of the evidence to

support a judgment of involuntary termination of a parent-child relationship, this court neither reweighs the evidence nor judges the credibility of the witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

Indiana Code Section 31-35-2-4(b) sets out the following relevant elements that a department of child services must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (A) the child has been removed from the parent for at least six months under a dispositional decree:

\* \* \* \* \*

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Here, Price contends that there is insufficient evidence to support the termination of her parental rights. Specifically, she contends that the DCS failed to prove that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to J.P.'s well being.

Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *R.S.*, 774 N.E.2d at 930. Although the trial court should

judge a parent's fitness at the time of the termination hearing, it must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect of the children. *Matter of C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Our review of the evidence reveals that Price is both a paranoid schizophrenic and a manic-depressive. She has attempted suicide at least once and has had at least two breakdowns. Price's mother was so concerned about Price's mental health issues and J.P.'s safety that she took J.P. to live with her when J.P. was just four months old. At the time of the termination hearing, Price was not taking any medication to control her mental health. Price is unable to work and has a criminal history that includes at least ten arrests for offenses such as disorderly conduct, assault and battery, and trespass.

Despite these problems, Price has refused to undergo a court-ordered psychiatric evaluation and to attend counseling, parenting classes, and supervised visitation. She currently lives in a one-bedroom apartment with her boyfriend, and has not seen J.P. since June 2005, when J.P. was six months old.

Recognizing our deferential standard of review, we find that this evidence supports the trial court's finding that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children. We reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and

firm conviction that a mistake has been made.” *Egley v. Blackford County DPW*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here, and therefore affirm the trial court.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.